



December 7, 2016

**BY ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St, S.W.  
Washington, D.C. 20554

**Re: NOTICE OF EX PARTE**  
**GN Docket No. 14-28: *Promoting and Promoting the Open Internet***

Dear Ms. Dortch:

On Monday, December 5, Stephen Coran, Counsel to the Wireless Internet Service Providers Association (“WISPA”), Ross Lieberman, Senior Vice President of Government Affairs at the American Cable Association (“ACA”), Mike Romano, Senior Vice President of Industry Affairs and Business Development at NTCA—The Rural Broadband Association (“NTCA”), and Rebecca Murphy Thompson, EVP & General Counsel for Competitive Carriers Association (“CCA”) (together, the “Associations”) met with Lisa Hone, Legal Advisor to Chairman Wheeler. On Tuesday, December 6, I joined the Associations for meetings with Travis Litman, Legal Advisor to Commissioner Rosenworcel, and separately with Nick Degani, Legal Advisor to Commissioner Pai; Josh Seidemann, Vice President of Policy, participated for NTCA in place of Mr. Romano in the December 6 meetings. The Associations discussed the item on circulation regarding extending the exemption for small broadband internet access service (“BIAS”) providers from the enhanced transparency requirements established by the *2015 Open Internet Order*.<sup>1</sup>

The Associations emphasized that, until the Federal Communications Commission (“FCC” or “Commission”) or Congress comprehensively addresses the future of the small provider exemption to the enhanced transparency rules, it is of paramount importance that the Commission act in the near term to prevent small BIAS providers from having to comply with additional, unnecessary obligations merely because the current exemption expired. Accordingly, the Associations urged the Commission to grant small BIAS providers a waiver, as

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<sup>1</sup> *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, 30 FCC Rcd 5601 (2015) (“*2015 Open Internet Order*”), *aff’d* *United States Telecom Association, et al. v. FCC*, No. 15-1063 (D.C. Cir. June 14, 2016); *see id.* at ¶¶162-171 (the “enhanced transparency rules”).

contemplated, before the exemption expires on December 15, 2016.<sup>2</sup> Regarding the scope of the further exemption, the Associations urged the Commission to consider Congressional support for the Small Business Broadband Deployment Act,<sup>3</sup> which provides an extended exemption from the enhanced transparency rules to small BIAS providers serving 250,000 subscribers or less.

The proposed waiver would relieve small BIAS providers from the burdens of the enhanced transparency obligations until the Commission determines the proper requirements for those providers. As each of the Associations has stated in the record, implementing the enhanced transparency rules would be enormously burdensome and costly for small BIAS providers. The Associations highlighted that the enhanced transparency rules have not been approved by the Office of Management and Budget (“OMB”) through the Paperwork Reduction Act (“PRA”) review process,<sup>4</sup> and expressed concern that OMB approval in the absence of an exemption would create substantial confusion and uncertainty. The Associations noted that they had all separately objected to the compliance burden estimates put forth by the Commission throughout the PRA process, which represent a fraction of the true cost of compliance.<sup>5</sup> Further, the Associations explained how small BIAS providers will struggle to implement enhanced transparency rules at the same time as those stemming from the *Privacy Report and Order*.<sup>6</sup>

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<sup>2</sup> *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order, 30 FCC Rcd 14162, ¶ 1 (CGB 2015) (“*Small Provider Exemption Report and Order*”).

<sup>3</sup> The House of Representatives unanimously passed the Small Business Broadband Deployment Act (the “Act”), which incorporates a five-year sunset provision. See H.R. 4596, 114<sup>th</sup> Cong. (2016), available at: <https://www.congress.gov/bill/114th-congress/house-bill/4596/text?q=%7B%22search%3A%5B%22HR4596%22%5D%7D&resultIndex=1>. The Senate version of the Act is similar with a 250,000-subscriber threshold with a three-year sunset. The Senate version has been reported out of the Senate Commerce Committee by a voice vote. See S.2283, 114<sup>th</sup> Cong., S.2283, Small Business Broadband Deployment Act, available at: <https://www.congress.gov/bill/114th-congress/senate-bill/2283/text>.

<sup>4</sup> See *Small Provider Exemption Report and Order* at ¶ 1 (noting that extending the small provider exemption until December 15, 2016 was predicated on the need “to avoid acting prematurely in advance of [Paperwork Reduction Act] approval...”).

<sup>5</sup> The FCC estimates that the total annualized capital, operation and maintenance costs of the enhanced transparency rules for the estimated 3,188 respondents will be \$640,000, or \$200.75 per respondent per year. See Information Collection Being Submitted for Review and Approval to the Office of Management and Budget, 81 FR 53145, 53145-46 (Aug. 11, 2016). The FCC previously submitted an initial estimate in May 2015. See Information Collection Being Reviewed by the Federal Communications Commission, 80 FR 29000 (May 20, 2015).

<sup>6</sup> *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Report and Order, WC Docket No. 16-106, FCC 16-148 (rel. Nov. 2, 2016) (“*Privacy Report and Order*”).

Indeed, small BIAS providers must confront the costly prospect of implementing most of the new privacy rules beginning on January 3, 2017 through June 2, 2017.<sup>7</sup>

The Associations reiterated their commitment to working with the Commission to secure continued relief for their respective small BIAS provider members.

This *ex parte* notification is being filed electronically pursuant to Section 1.1206 of the Commission's Rules.

Sincerely,

*/s/ Elizabeth Barket*

Elizabeth Barket  
Law & Regulatory Counsel  
COMPETITIVE CARRIERS ASSOCIATION

*/s/ Stephen Coran*

Stephen Coran  
Counsel  
WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

*/s/ Ross Lieberman*

Ross Lieberman  
Senior Vice President of Government Affairs  
AMERICAN CABLE ASSOCIATION

*/s/ Mike Romano*

Mike Romano  
Senior Vice President of Industry Affairs and Business Development  
NTCA—THE RURAL BROADBAND ASSOCIATION

cc: Lisa Hone  
Travis Litman  
Nick Degani

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<sup>7</sup> Since the *Privacy Report and Order* was published in the Federal Register on December 2, 2016, and assuming speedy PRA approval, the rules prohibiting conditioning broadband service on a waiver of privacy rights take effect for all carriers on January 3, 2017; rules regarding a duty to impose reasonable data security on all personally identifiable information take effect for all carriers on March 2, 2017; breach notification provisions go into effect for all carriers on June 2, 2017; and, for small carriers only, notice and choice provisions go into effect on December 2, 2018. See *Privacy Report and Order* at ¶¶ 311-315, 320-323.